ITEM 4.9

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August 1, 2001

Mr. Allen M. Lawrence, Chairman
California Transportation Commission
1120 "N" Street, Room 2221 (MS-52)
Sacramento, CA 95814

RECEIVED
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Attention: Robert I. Remen

Subject: A Policy and Legislative Question - How Will AB 1012 "Use It Or Lose It" Provisions Apply If Federal Highway Sanctions Are Imposed?

Dear Chairman Lawrence:

On Tuesday, July 17, EarthJustice and other groups announced their intent to sue both the U.S. Environmental Protection Agency (EPA) and the San Joaquin Valley Unified Air Pollution Control District (Air District) in 60 days for failure to stop the air pollution health threat within the San Joaquin Valley. Enclosed is the press packet that was released, including letters to both EPA and the Air District providing the basis for the pending legal action. Please note that the eight Valley Regional Transportation Planning Agencies are not named in this action.

The specific details are somewhat complex, and will be summarized later in this letter so that you may have a broad understanding of the entire issue. The bottom line, however, is that potential highway sanctions may occur, i.e. withholding federal highway funds and withholding federal approval of projects. Funds affected may include:

- Regional and State Surface Transportation Program (STP)
- Congestion Mitigation and Air Quality Program (CMAQ)
- National Highway System
- Interstate Construction
- Interstate Substitution
- Interstate Maintenance
- Bridges

Physically, the federal funds will still flow to the state, but any specific area under a sanction is subject to having their project approvals and funding withheld until the sanctions are lifted. While some exempt projects will move forward, others such as capacity enhancing projects will be at a standstill. A list of the exempt projects is attached for your information.

The threat of highway sanctions brings us to the issue posed at the beginning of this letter - the relationship between the sanctions and the AB 1012 "Use It Or Lose It" provisions. If funds and approvals are being withheld, many federal projects cannot be delivered or even move forward.

I would ask the California Transportation Commission to consider the policy implications, and whether you have the administrative ability to suspend the AB 1012 provisions while highway sanctions are in effect? If you do not have the administrative ability, what type of legislative action is needed to provide you with that authority?

BACKGROUND - AIR QUALITY ISSUES

Under the federal Clean Air Act, the EPA is required to impose sanctions on an area if EPA determines that the area has not submitted or implemented adequate plans or rules to attain air quality standards. The highway sanctions are one of two types of powerful tools Congress gave to EPA to force compliance with the Clean Air Act: 1) withholding of federal highway funds and approvals; and 2) imposing 2 to 1 offsets on new or modified stationary sources of pollution. While EPA has formally notified states of its intent to use this tool frequently since 1990, the actual imposition of sanctions, which cannot occur until 18 months after formal notification, is a relatively rare event. The formal notification starts what EPA refers to as the "sanctions clock", giving a state 18 months to submit or resubmit a plan or rule and obtain approval.

Even absent the pending legal action that may impact sanction timelines, three recent actions by EPA regarding the Air District's State Implementation Plan submittals have already started or will start separate sanction clocks. The attached timeline will provide a quick visual to the explanations below.

- On April 7, 2000 EPA determined that the Air District's Rules dealing with PM_{10} (affectionately known as "fugitive dust") were inadequate. The Air District has 18 months to not only submit, but have EPA approve, corrections to the identified deficiencies. If no approval has occurred at the 18 month mark (October 2001), the 2 to 1 stationary source emission offsets go into effect. Six (6) months later (April 2002), if there is still no approval, highway sanctions are applied. Also at this point, 24 months from the 2000 year action, the EPA will be required to promulgate a Federal Implementation Plan; i.e. if the District and State do not correct the problem the federal government must devise the plan that will. The Air District plans to adopt the new rule in December 2001, and EPA would have three months to approve the rule. Air District rules are generally approved much faster than submitted plans, and therefore this sanction may be avoided if EPA acts quickly.
- EPA has proposed to reclassify the San Joaquin Valley air basin from "serious" to "severe". This means the Air District must revise its rule for new sources of pollution (i.e. new industry, etc.) and its federal operating permit rules (existing permitted sources). The Air District's timeframe for submitting the revisions is May, 2001, which they intend to meet.
- In the same EPA proposal to downgrade the Valley from "serious" to "severe", EPA put out a draft determination that the Valley's approved ozone State Implementation Plan had not been fully implemented. EPA cited that the Air District failed to adopt and implement six of the 20 stationary and area-source control measures contained in the plan. The Air District must correct the deficiencies to stop the sanctions clock. EPA has not finalized this particular determination, so the exact timing of the potential sanctions clock cannot be determined. The Air District expects to adopt and submit to EPA the required rules well ahead of a sanction clock expiration. Plan approvals by EPA have been known to run in excess of a year.

These sanctions may apply separately, at different points of time, and may or may not overlap depending on EPA actions on various subjects. Theoretically it is possible to have one set of sanctions lifted, only to be under another sanction within a month or two.

BACKGROUND - AB 1012

AB 1012 requires Caltrans to monitor the use of CMAQ and Regional STP fund balances to assure full and timely use of these funds. Local agencies must now obligate the funds within a three year apportionment period. The Department is responsible for reporting what apportionments are subject to potential lapse. It will trigger the Department to provide written notice to the implementing agencies when there is one year remaining within the three year apportionment period. Agencies are required, within six months of that notice, to develop a plan for obligating any balance older than two years old and to implement that plan so that none of the apportionment balances reach three years. Any apportionment not obligated by the end of the third year of availability will be reprogrammed by the California Transportation Commission (CTC) on other projects.

CONCLUSION

Although three years seems a long time to someone outside of the transportation programming and delivery business, we all know that with the various environmental and other requirements to be met that three years is sometimes required for more complex projects. If an area becomes subject to highway sanctions, many projects will in effect be suspended in time until the sanctions are lifted. However, AB 1012 does not recognize this "sanction" complication, and can therefore put project funding at risk.

I will close with the same question posed earlier in this letter. I would ask the California Transportation Commission to consider the policy implications, and whether you have the administrative ability to suspend the AB 1012 provisions while highway sanctions are in effect? If you do not have the administrative ability, what type of legislative action is needed to provide you with that authority?

Thank you for your consideration of this matter. This question, though posed first due to this San Joaquin Valley issue, has statewide implications as air quality non-attainment areas struggle with meeting attainment standards.

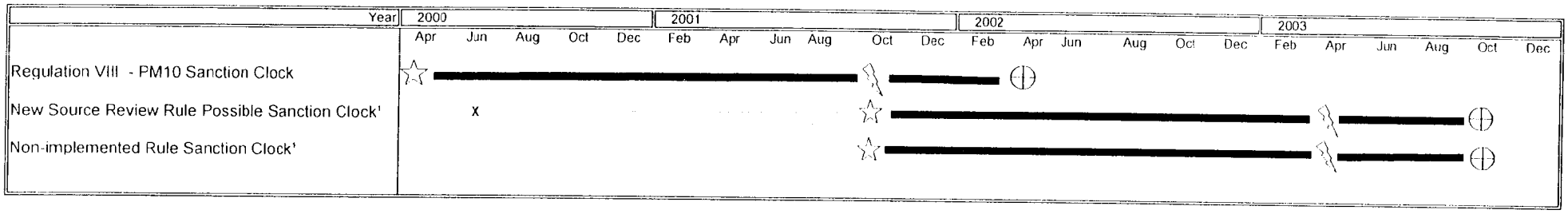
Sincerely,

Barbara Goodwin

BARBARA GOODWIN, Executive Director
Council of Fresno County Governments

c: Fresno County Legislators
San Joaquin Valley COG Directors
Caltrans District and Headquarters
San Joaquin Valley Unified Air Pollution Control District
Federal Highway Administration
California Air Resources Board
Environmental Protection Agency

Council of Fresno County Governments
EPA Sanctions Under the Clean Air Act
Sanctions Clocks for the San Joaquin Valley Air Basin



x Time period for Air District to adopt rules before sanction clock starts

Start of sanctions clock

Imposition of 2:1 offset sanctions

Imposition of highway sanctions

1 Assumes EPA Proposed Actions will be finalized (published in Federal Register) October 2001.
2 Sanction clock starts on "effective date," which is 30 days after publication in Federal Register.
3 First sanction proposed to be imposed is 2:1 offset sanction.
4 Highway sanctions will be imposed 6 months after offset sanctions if Air District still has not met obligations.

ACTION: Exemption Criteria During Highway Sanctions March 11, 1996

Rodney E. Slater
Administrator HEP-40

Regional Administrators
Federal Lands Highway Program Administrator

This policy memorandum defines the exemption criteria that will be used to determine which projects can go forward and which grants can be awarded in the event EPA imposes highway sanctions under Section 179(a) or Section I 10(m) of the CAA. This policy memorandum contains a description of the criteria for exemptions and clarification of the types of projects and programs that are exempt. Projects for which exemptions cannot be granted are also included in this policy memorandum.

General Description

Highway sanctions, when applied, halt the approval of projects and the award of any grants funded under Title 23, U.S.C., except as defined in Section 179(b) and as clarified by this policy memorandum. This applies to the following major funding programs:

1. Surface Transportation Program (STP).
2. National Highway System.
3. Interstate Maintenance.
4. Bridges.
5. Interstate Construction.
6. Interstate Substitution.
7. Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Projects funded under all other Title 23 programs and other authorizations are also subject to sanctions, including demonstration projects identified by Congress and specified in the ISTEA of 1991 under Sections 1 103 -1108 or in other laws, unless they meet the criteria set forth in this policy memorandum. Additionally, other Title 2') projects to be funded under previously authorized programs (prior to passage of the ISTEA, such as the Federal-aid Urban, Federal-aid Secondary Programs, etc.) may also be subject to certain highway funding restrictions under highway sanctions.

Projects funded under Title 49, U.S.C. chapter 53, the Federal Transit Act, as amended, are categorically exempt from sanctions by law as are other transportation programs authorized by statutes other than Title 23.

Typical Nonexempt Projects

The following types of projects generally do not meet the exemption criteria in Section 179(b)(1) and would not be allowed to be federally funded or approved under Title 23 unless it isdemonstrated that they meet one or more of the exemption criteria. These include projects that expand highway or road capacity, nonexempt project development activities, and any other project that does not explicitly meet the criteria in this policy memorandum. These may include activities for:

1. The addition of general purpose through lanes to existing roads.
2. New highway facilities on new locations.
3. New interchanges on existing highways.
4. Improvements to, or reconfiguration of existing interchanges.
5. Additions of new access points to the existing road network.
6. Increasing functional capacity of the facility.
7. Relocating existing highway facilities.
8. Repaving or resurfacing except for safety purposes, as defined by section 179(b).

9. Project development activities, including NEPA documentation and preliminary engineering, right-of-way purchase, equipment purchase, and construction solely for non exempt projects.
10. Transportation enhancement activities associated with the rehabilitation and operation of historic transportation buildings, structures, or facilities not categorically exempted.

Project Exemptions

Under Section 179(b)(1) of the CAA, once EPA imposes highway sanctions, the FHWA may not approve or award any grants in the sanctioned area except those which generally meet the criteria within this memorandum. Congress specifically exempted projects which fall under three categories: (1) safety programs and projects (under Section 179(b)(1)(A)); (2) seven congressionally-authorized activities (under Section 179 (b)(1)(B)(i-vii)); and, (3) air quality improvement projects that would not encourage single occupant vehicle (SOV) capacity (under Section 179(b)(1)(B)(viii) of the CAA). This policy memorandum further interprets and clarifies these statutory exemption provisions.

1. Safety Programs and Projects

Safety projects are those for which the principal purpose is an improvement in safety but the projects may also have other important benefits. These projects must resolve a demonstrated safety problem with the likely result being a significant reduction in or avoidance of accidents as determined by the FHWA. Such demonstration must be supported by accident or other data submitted by the State or appropriate local Government.

Four general types of categories of safety-based programs and projects potentially meet the exemption criteria; grant programs and related activities; Emergency Relief (ER) projects; statewide safety-improvement programs; and specific projects outside of a statewide safety program. Each category calls for varying levels of justification.

a. Programs administered by NHTSA qualify for blanket exemptions, on the basis that their principal purpose is to improve safety and do not include any capital improvements. Programs that fall within this category include but are not limitedto: (1) Use Safety Belts and Motorcycle Helmets (23 U.S.C. 153); (2) Highway Safety Programs (23 U.S.C. 402); Highway Safety Research and Development (23 U.S.C. 403); and (4) Alcohol-Impaired Driving Countermeasures(23 U. S. C. 4 1 0).

b. The ER projects funded by Title 23 to repair facilities damaged or destroyed by natural disasters, civil unrest, or terrorist acts are exempt without further justification, provided that Such projects do not involve substantial functional, locations], or capacity changes.

c. Statewide safety improvement programs include specific safety projects that can be Listed on the basis of State or national level data, which will be additionally supported by data and analysis stemming from the State (or ISTEA) management system requirements once the systems are fully operational. Projects meeting this exemption category would come out of the Highway Safety Improvement Program (23 CFR Part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR Part 650, Subpart D). The Highway Safety Improvement Program also includes the Hazard Elimination Program (23 U.S.C 152).

d. Specific projects for which justification is needed to show that the project is related to safety, unless the project is drawn out of a statewide safety program and would be likely to reduce accidents, would include capital projects such as:

- Elimination of and safety features for, railroad-highway grade crossings.
- Changes in vertical or horizontal alignment.
- Increasing sight distance.
- Elimination of high hazard locations or roadside obstacles.
- Shoulder improvements, widening narrow pavements.

Transportation programs not otherwise exempt that improve air quality and which would not encourage SOV capacity (as determined by EPA in consultation with DOT) are also exempt from highway sanctions. For example, projects listed in section 108(f) of theCAA and projects funded under 23 U. S.C. 149, the CMAQ program, are projects which EPA and DOT may, after individual review of each project, find to be exempt from highway sanctions. For these projects to advance while highway sanctions are in place, the State must submit to DOT an emissions reduction analysis similar to that required under the CMAQ program, Upon receipt, DOT will forward it to EPA. The EPA will complete its review and make its finding regarding air quality and SOV capacity within 14 days of receipt of such information.

The EPA and DOT have agreed that the following projects will be categorically exempt from highway sanctions, and will not require additional EPA review or an individual finding by EPA:

a. The TCMs contained in an EPA-approved SIP or FIP which have emission reduction credit and will not encourage SOV capacity.
b. I/M facilities and activities eligible for C@Q funding.
c. Bicycle and pedestrian facilities and programs.
d. Carpool/Vanpool programs.
e. Conversion of existing lanes for HOV use during peak-hour periods, including capital costs necessary to restrict existing lanes (barriers, striping, signage, etc.).

In considering exempt projects, States should seek to ensure adequate access to downtown and other commercial and residential areas, and should strive to avoid increasing or relocating emissions and congestion.

4. Projects That Have a "De Minimis" Air Quality Impact and Provide Other Environmental or Aesthetic Benefits

The following projects are likely to have "de minimis" environmental or environmentally beneficial impacts, provide other aesthetic benefits, do not promote SOV capacity, and are, therefore considered exempt from highway sanctions:

a. Wetland Mitigation.
b. Planting Trees, Shrubs, Wildflowers.
c. Landscaping.
d. Purchase of Scenic Easements.
e. Billboard and Other Sign Removal.
f. Historic Preservation.
g. Transportation Enhancement Activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
h. Noise Abatement.

Planning and Research Activities: Planning and research activities for transportation and/or air quality purposes are exempt from highway sanctions (except as noted in the Project Development Activities section). Such planning and research is critical for the development of projects that improve safety and address an area's transportation/air quality needs. Planning and research activities may include development of anEnvironmental Impact Study or Environmental Assessment (under NEPA) in conjunction with a major investment study. Major investment studies are planning studies which normally take a multimodal approach in considering transportation alternatives, and are therefore exempt from sanctions under this criteria.

Research activities also include those research, development, testing, and planning projects involving the National Intelligent Transportation Systems (ITS) Program funded by Part B of Title 6 of the 1991 ISTEA. The goal of the ITS Program is to use advanced technology to improve travel and roadway safety without expanding existing infrastructure. The ITS activities are generally done under seven broad categories:

- Adding or upgrading guardrail, medians and barriers, crash cushions, fencing.
- Pavement resurfacing or rehabilitation to improve skid resistance.
- Replacement or rehabilitation of unsafe bridges.
- Safety roadside rest areas, truck size and weight inspection stations.
- Addition and upgrading of traffic control devices, (traffic signals, signs, and pavement markings).
- Lighting improvements.
- Truck climbing lanes.

Justification for an exemption on the grounds of safety must be based on accident or other data such as the data derived from a State's safety and bridge management system, the Highway Safety Improvement Program, or the Highway Bridge Replacement and Rehabilitation Program. Such data need not be specific to the proposed project's location, but may be based on accident or other data from similar conditions, including national experience where such projects have been implemented to remove safety hazards. For example, rigid highway sign posts were identified in the past as a safety hazard causing unnecessary deaths and injuries. The identification of this hazard led to national policy requiring rigid posts to be replaced with breakaway poles.

Projects exempted under the safety provision may not involve substantial functional (such as upgrading major arterial to freeways), locational, or capacity changes except when the safety problem could not otherwise be solved.

2. Congressionally Authorized Activities

Seven project types are identified specifically in the C.N.A. section 179(b)(1) as exempt from highway sanctions. Essentially, these are projects that generally do not result in increased SOV capacity, or improve traffic flow (e.g., intersection improvements or turning lanes) in ways that reduce congestion and emissions:

a. Capital programs for public transit. These include any capital investment for new construction, rehabilitation, replacement, or reconstruction of facilities and acquisition of vehicles and equipment.
b. Construction or restriction of certain roads or lanes solely for the use of passenger buses or High Occupancy Vehicles (HOV). Exempt projects include construction of (or conversion of existing lanes to) new HOV lanes, if those lanes are solely dedicated as 24-hour HOV facilities.
c. Planning for requirements for employers to reduce employee work-trip related vehicle emissions. This includes promotional and other activities associated with this type of program that are eligible under Title 23.
d. Highway ramp metering, traffic simulation, and related programs that improve traffic flow and achieve a net emission reduction.
e. Fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations (this includes the construction of new facilities and the maintenance of existing facilities).
f. Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration, particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs. Exempt projects include all activities of these types that are eligible under existing funding programs.
g. Programs for breakdown and accident scene management, non-recurring congestion, and vehicle information systems, to reduce congestion and emissions.

The FHWA will consult with EPA on any project claimed to reduce emissions (e.g., with projects falling under paragraphs c, d, and g above). However, the final authority to determine whether a project meets the criteria in this memorandum and is exempt from highway sanctions rests with the FHWA.

3. Air Quality Improvement Programs that Do Not Encourage SOV Capacity

(1) transportation management and traveler information; (2) travel demand management; (3) public transportation operations; (4) electronic payment- (5) commercial vehicle operations; (6) emergency management; and (7) advanced vehicle control and safety systems. Therefore, planning and research activities associated with the ITS Program are also exempt from sanctions under this criteria.

Project Development Activities: Development and completion of studies to meet requirements under NEPA are exempt from highway sanctions as long as consideration of projects that would be exempt under this policy memorandum, such as transit or other Transportation Demand Management (TDM) measures, are actively pursued as reasonable independent alternatives. Once all alternatives that could be considered exempt from highway sanctions under this policy memorandum are eliminated, project development activities for NEPA or other purposes are no longer exempt and can no longer be approved or funded under Title 23. For example, if prior to completion of NEPA documentation, all TDM measures are eliminated from consideration and the sole remaining question is the determination of an alignment for a highway capacity expanding project (which may include TDM), subsequent project development activities are not exempt from highway sanctions.

The FHWA may not approve preliminary engineering for final design of a project, nor can approval be granted for a project's plans, specifications, and estimates after initiation of highway sanctions for projects that are not exempt under this policy memorandum. Neither right-of-way nor any necessary equipment may be purchased or leased with Federal funds for nonexempt projects while an area is under sanction. Federally-funded construction may not in any way begin on a project that does not meet the exemption criteria described in this policy memorandum while an area is under sanction.

Highway sanctions apply to those projects whose funds have not yet been obligated by FHWA by the date the highway sanction applies. Those projects that have already received approval to proceed and had obligated funds before EPA imposes the prohibition may proceed even while the area is under sanction, if no other FHWA action is required to proceed. In the case of a phased project, only those phases that have been approved and had obligated fiends prior to the date of sanction application may proceed. For example, if preliminary engineering for a project was approved and funds were obligated prior to application of sanctions, but no approval was secured for later project phases(such as right-of-way acquisition, construction, etc.), preliminary engineering could proceed while the highway sanction applies, but no subsequent phases of the project could proceed with FHWA funds unless the total project meets the exemption criteria in this policy memorandum. These restrictions pertain only to project development activities that are to be approved or funded by FHWA under Title 23. Activities funded under Title 49, U.S.C., or through State or other funds, may proceed even after highway sanctions have been imposed unless: (1) approval or action by FHWA under Title 23 is required; and (2) they do not meet the exemption criteria of this policy memorandum.

Other Environmental Requirements

Exemption of a transportation project from Section 179(b)(1) highway sanctions does not waive any applicable requirements under NEPA (e.g., environmental documents), section 176(c) of the CAA (conformity requirement), or other Federal law.

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SAN JOAQUIN VALLEY MEDICAL, COMMUNITY, AND ENVIRONMENTAL GROUPS ANNOUNCE UPCOMING LAWSUIT TO ENFORCE CLEAN AIR ACT

FRESNO, CA - At Fresno City Hall today, medical, community, and environmental groups announced their intention to sue both the U.S. Environmental Protection Agency and the San Joaquin Valley Unified Air Pollution Control District in 60 days for failure to stop the air pollution that threatens the health of all San Joaquin Valley residents.

The lawsuits will be brought by Earthjustice on behalf of the Fresno-based Medical Alliance for Healthy Air, Latino Issues Forum, Center on Race, Poverty and the Environment and the Sierra Club.

On May 1, 2001, the American Lung Association released a report demonstrating that three of the five most polluted places in the nation are situated in the San Joaquin Valley. Breathing is more dangerous in Bakersfield, Fresno and the Visalia-Tulare-Porterville area than any place in the nation except Los Angeles. In 1998 the San Joaquin Valley exceeded the 8-hour ozone standard 82 times. This compares only to Los Angeles with 92 days over the limit. The year 2001 may set a new record for air pollution in the San Joaquin Valley.

"While most other areas in the country have shown at least modest improvement in controlling smog and soot, in a few years the San Joaquin Valley will become the most smog-polluted region in the United States," said Dr. David Pepper of the Medical Alliance for Healthy Air. "Medical professionals are shocked by increasing numbers of children and the elderly forced into the emergency room each summer because they cannot breathe."

Costs to Human Health in the Valley

The lung damage caused by ozone exposure may be likened to the lung damage caused by cigarette smoking. People who live in areas with polluted air have blacker lungs than people living in areas with clean air. EPA's own studies conclude that, nation-wide, pollution from smog and soot causes 60,000 premature deaths annually more than auto accidents or homicides. Air pollution exacerbates asthma attacks, increases risks of heart attacks, and increases emergency room visits and work-loss days.

"In the Central Valley Latino communities not only live in areas with poor air quality but are also impacted by the fact that a large percentage of Latinos do not have access to health care or are unable to communicate with health care providers," said Leo Avila, Board President of Latino Issues Forum.
More than 40% of all Latino adults and one-third of all Latino children do not have health insurance. These factors make a difficult situation a fatal situation.

While the growing asthma problem in the United States has increased rates of asthma-related mortality and hospitalizations, especially among children, air pollution is also a leading cause of school and work absenteeism. San Joaquin Valley residents are literally dying for a breath of clean air.

"Other regions of the United States have balanced the need for clean air with economic development," said Kevin Hall, a Fresno native, and member of the local Sierra Club chapter. "Even Los Angeles has made

significant air quality improvements over the last decade while things have not improved here. They have found some good solutions we could implement, if we had the political courage. Unfortunately, the scales in the Valley have repeatedly tipped in favor of unrestrained pollution. The regional Air District is allowing pressure from industry groups to trump public health. Agency inaction has forced this community to sue to protect the health of our families."

Agriculture: Polluter and Victim

In a November 15, 2000 report to State Senator Jim Costa, D-Fresno, the California Air Resources Board disclosed the amount of reactive organic gas, a smog forming agent, and ammonia, a toxic gas which forms fine soot particles in the atmosphere. The report shows that agricultural sources emit more than 23% of total reactive organic gas emissions and 86% of total ammonia emissions in the San Joaquin Valley. A CARB scientist published a study in 1999, which indicates that ammonia based soot, ammonium nitrate, constitutes 15-50% of total soot in the air, depending on location and time of year.

"The dairy industry stakes claim to the largest source of agricultural air pollutants," said Brent Newell, attorney with the Delano-based Center on Race, Poverty & the Environment. "While dairies emit 10% of total reactive organic gas and 44% of total ammonia, the San Joaquin Valley Air Pollution Control District has exempted agricultural sources, including dairies, from air pollution rules."

Studies also show high levels of smog impact agriculture yields in the Valley, an important food source for the nation and the economic engine of the region. Exposure of plants to ozone pollution inhibits photosynthesis and alters carbon allocation, in turn suppressing the growth of crops and trees by decreasing their capacity for growth and maintenance. This growth suppression and associated loss of vigor increases insect and pathogen attacks. The economic impact is staggering. The San Joaquin Air District estimates the annual cost of crop damage due to air pollution to be in excess of $150 million.

Costs to National Parks and Tourism

"I'm proud that it was my dad's signature on the Clean Air Act Amendments of 1990 that helped reduce acid rain and urban air pollutions."

- George W. Bush, Sequoia National Park, (May 30, 2001)

Even the high Sierra - seemingly so removed from population centers - is not spared the effects of dirty air transported from the Valley: forty percent of Jeffrey and Ponderosa pines in Sequoia and Kings Canyon National Parks show obvious signs of damage from smog, and visibility from those Parks, once famous for their sweeping vistas, has been radically reduced over decades. These are now two of the most polluted national parks in the entire country, on some days even more polluted than Los Angeles. This has economic consequences, as the diminished quality of the recreational experience in these heavily-visited Parks impacts nearby Valley communities that rely on dollars generated by Park tourism and associated services.

Legal Action

Letters sent to Christine Whitman, administrator of the EPA and David Crow, executive director of the San Joaquin Valley Unified Air Control District, begin the process for the filing of a citizen enforcement action in federal district court as authorized under the Clean Air Act.

"When state and local agencies responsible for clean air violate the Clean Air Act, the EPA is required to enforce standards and deadlines," said Deborah Reames, attorney for Earthjustice. "When the EPA fails to do the job, the Act empowers citizen groups to sue for enforcement. Residents of the San Joaquin Valley seem to have little choice but to sue if they want to protect public health."

SUMMARY OF TODAY'S ACTIONS

The Fresno-based Medical Alliance for Healthy Air, Latino Issues Forum, the Center on Race, Poverty and the Environment, and the Sierra Club today announced that they will be suing the U.S. Environmental Protection Agency and the San Joaquin Valley Unified Air Pollution Control District for missing no less than nineteen deadlines set under the Clean Air Act. The Act requires that notice of citizen enforcement suits be given 60 days before they are filed.

Why?

San Joaquin Valley has missed every deadline for attaining national health-based standards for smog and soot since passage of the 1970 Clean Air Act, including the December 31, 1993 soot attainment deadline and the November 15, 1999 smog attainment deadline. Because the Valley has already experienced so many violations of the national soot standard, we already know it will certainly miss its new December 31, 2001 soot attainment deadline as well. And rather than improving, air quality appears to be getting worse: soot emissions have increased steadily since 1975, and smog pollution is already 60 percent higher this year than last. These lawsuits are the focal point of a concerted effort by these organizations and their allies to promptly get the San Joaquin Valley back on track to clean and healthy air for all of its residents.

Who Is Responsible?

U.S. Environmental Protection Agency - This is the federal agency that is supposed to ensure that all of the nation's residents have clean air, and is charged with stepping in when local governments fail to get the job done. However, we have documented over thirteen specific instances in the past seven years where EPA has failed to act as required by law. The most egregious violations are (1) EPA's failure to re-designate the Valley to a "severe nonattainment" area for smog, which would force new pollution control measures be implemented on factories, power plants and other big polluters; and (2) EPA's failure to disapprove two illegal Air District Rules exempting oil refineries from federal enforcement and exempting giant factory farms from any regulation whatsoever. The upcoming lawsuit will ask the court to order EPA promptly to re-designate the Valley as "severe" nonattainment, reject these special interest rules and take an array of other overdue actions required by the Clean Air Act.

San Joaquin Valley Unified Air Pollution Control District - This is the frontline agency that is supposed to develop and implement EPA-approved pollution control plans to protect the Valley's air. The Air District's history of failures even to take the steps necessary to lead to clean up air pollution, let alone attain the national standards for smog and soot – not coincidentally accompanied by static or even declining air quality – appears to be the work of an Air District more concerned about accommodating the oil industry in southern San Joaquin Valley and other powerful industrial interests than protecting the health of its residents. Specifically, the Air District has failed to adopt six pollution control measures regulating smog-causing pollution from a variety of sources – including oil wells, commercial charbroiling and architectural coatings – as it was required to do over six years ago. This suit is to compel the Air District to promptly adopt and implement these air quality protection measures.

Effects of Air Pollution on Health, Agriculture, and Forests

How is the San Joaquin Valley affected by smog?

- Kern and Fresno Counties had the highest number of people facing 'very unhealthy' and 'hazardous' ozone exceedance days in 1998 – 6.2 million and 4.9 million respectively. [1]
- For the period 1997-99, every county in the San Joaquin Valley received a grade of "F" for the high number of dangerous smog days. [2]
- In Fresno, Modesto, Bakersfield, Salinas, and Stockton alone, the financial cost of asthma is more than $85 million per year.[3]

HEALTH

How is air pollution from smog (ozone) and soot (particulate matter) harmful to human health?

- In Kern, Kings, Merced, San Joaquin, Tulare counties in the San Joaquin Valley Air District, air pollution kills more people than the state average.[4]
- The California State Health Department estimates indicate that up to 2.2 million Californians have asthma.[5]

SMOG

- When inhaled, smog irritates the respiratory system and causes shortness of breath, wheezing, coughing, and chest pain in addition to aggravation of other lung diseases.
- Smog not only aggravates the respiratory system temporarily; prolonged inhalation of unsafe levels of smog can reduce lung function and development in children, and permanently damage lung tissue.[6]
- Smog exposure can also worsen allergies.[7]
- Ozone can aggravate and worsen asthma attacks.

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[1] Calculated by multiplying the "at-risk" population by the number of very unhealthy and hazardous ozone exceedence days. (http://www.greatvalley.org/research/publications/index.htm)

[2] American Lung Association "State of the Air 20010" Data for California available at: http://www.lungusa.org/air2001/states/s_california.html. Full report available at http://www.lungusa.org/air2001/index.html

[3] Asthma and Allergy Foundation of America http://www.aafa.org/highcosts/city.html

[4] Chart book on mortality

[5] State Hospitalization Chart Book

[6] State of the Air 2001, ALA

[7] Asthma and the Environment, President's Task Force on Environmental Health, May 2000. Report available at: http://www.epa.gov/children/whatwe/fin.pdf

Who is most harmed by smog?

Although smog is harmful to everyone's lungs, certain groups are disproportionately at risk. They include:

1. *Children:* Children spend more time outdoors during the summer months than adults; at a time when their lungs are still developing. Children also suffer more from asthma and other respiratory ailments that are exacerbated by smog.
2. *Elderly:* Pollution-induced asthma can be especially dangerous in the elderly who suffer from more respiratory tract infections and previous lung damage than younger adults.
3. *Adults who are active outdoors:* Even the healthiest adults who exercise or work outdoors can experience lung damage when pollution levels are high.
4. *People who suffer from asthma and other respiratory diseases:* Asthmatics are at risk because they have decreased lung function and smog can greatly exacerbate the severity of attacks.
5. *Low-income and people of color:* These communities are at a greater risk because they often lack access to culturally and linguistically responsive health care so respiratory ailments, such as asthma, often go undiagnosed and untreated.

SOOT

- Nationwide, air pollution causes between 50,000 and 100,000 premature deaths per year – and soot accounts for a majority of these. Soot is the most deadly air pollutant.[8] Accounting for more deaths than homicides or automobile accidents.
- Soot aggravates asthma attacks.[9]
- Non-fatal effects of soot include reduced lung function and aggravation of respiratory illnesses (such as bronchitis, emphysema, chronic obstructive lung disease, and pneumonia) and heart problems.[10]
- Exposure to small particles of soot, even for short periods of time, increases the risk of heart attacks for one day after exposure.[11]
- Even at levels that are below the national standard, when concentrations of small particulate matter in the air increased, the risk of heart attacks increased. [12]

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[8] State of the Air 2001
[9] State of the Air
[10] American Lung Association of California urges Conservation, Renewable Energy, and Emergency-Only use of Diesel Generators, June 5, 2001. also at www.californialung.com/spotlight/cleanair01_nr.html
[11] Peters, Annette et al (2001), Increased Particulate Air Pollution and the Triggering of Myocardial Infarction, *Circulation*, vol. 103, pp.2810-2815. Also available on the web at www.circulationaha.org
[12] Peters, Annette et al (2001), Increased Particulate Air Pollution and the Triggering of Myocardial Infarction, *Circulation*, vol. 103, pp.2810-2815. Also available on the web at www.circulationaha.org

- According to the California Air Resources Board, diesel soot accounts for 70 percent of the cancer risk from toxic air pollution statewide.[13]

More about asthma

- Nationwide, asthma rates have increased dramatically over the past 15 years.[14]
- In California, from 1990 to 1997, nearly 5,000 people died from asthma.
- Elderly people have the significantly highest risk of dying from asthma.
- Asthma deaths are disproportionately burdening African Americans and other communities of color. The asthma death rate for African American children is over four times greater than the death rate for white children.[15]
- Asthma is the leading cause of school absenteeism – nationally more than 10 million school days are missed each year due to asthma.[16]
- The cost of asthma to the US economy in 1998 was $11.3 billion.[17]
- Hospitalizations account for the largest proportion of costs of asthma treatment, especially for very young children.[18]
- California's Latino children bear a disproportionate risk of pollution-provoked asthma; 29 percent of Latino children lack health insurance and thus lack access to both treatment and preventative care.
- Over 50,000 Californians are hospitalized yearly because of severe asthma attacks and more young children are hospitalized every year for asthma than for any other cause.[19]
- Nearly 12,000 people in the San Joaquin Valley Air District are hospitalized each year, more than 5,000 of whom are children.[20]

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[13] ALAC position statement on diesel available at www.californialung.com/spotlight/cleanair01_nr.html

[14] Asthma and the Environment, President's Task Force on Environmental Health, May 2000. Report available at: http://www.epa.gov/children/whatwe/fin.pdf

[15] Asthma and the Environment, President's Task Force on Environmental Health, May 2000. Report available at: http://www.epa.gov/children/whatwe/fin.pdf

[16] President's Task Force on Environmental Health Risks and Safety Risks to Children, Asthma and the Environment: A Strategy to Protect Children. January 28, 1999(Revised May 2000). Available at www.epa.gov/children/what/fin.pdf

[17] Asthma and the Environment, President's Task Force on Environmental Health, May 2000. Report available at: http://www.epa.gov/children/whatwe/fin.pdf

[18] Smith, David et al. (1997), A National Estimate of the Economic Costs of Asthma, *American Journal of Respiratory and Critical Care Medicine*, Vol.156, pp. 787-793. Also available online at http://ajrccm.atsjournals.org

[19] DHS CA County Asthma Hospitalization Chart Book

[20] California County Asthma Hospitalization Chart Book, CA Department of Health Services, August 2000. Report available at http://www.dhs.ca.gov/ps/deodc/ehib/ehib2/topics/asthma.html

AGRICULTURE

How does air pollution affect agriculture?

- The air district estimates annual crop costs in excess of $150 million from air pollution.
- Smog causes trees to lose leaves, slows their growth and causes leaf damage.
- According to EPA, even at relatively low levels of ozone exposure, crops can suffer a 20-40% loss in productivity.[21]
- Ozone exposure makes plants less productive by decreasing their photosynthesis and by causing leaves to die. According to EPA, even at relatively low levels of ozone exposure, crops can suffer a 20-40% loss in productivity.

NATIONAL PARKS

How does air pollution affect our national parks?

- Sequoia and Kings Canyon National Parks have the highest air pollution levels of any national parks west of the Mississsippi.
- Smog levels in Sequoia and Kings Canyon are sometimes higher than in Los Angeles.[22]
- Tree growth in these parks has been reduced by up to 11 percent.
- Soot pollution reduces visibility levels in the national parks.
- Ponderosa pines and Jeffrey pines are especially susceptible to ozone pollution, even at "normal" levels – which makes high smog days even more detrimental to growth. Sequoia seedlings are also highly sensitive to pollution.
- A vast majority of the trees in a study by the Forest Service in Sierra and Sequoia National Forests show smog damage. Trees in the foothills outside of the parks (black oaks in particular) and in San Joaquin Valley are also highly susceptible to smog damage.[23]

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[21] Below the Valley's 14 ppb maximum of both 2000 and 2001.

[22] April 2001, Assessment of Air Quality and Air Pollutant Impacts in Class I National Parks in California, published by the US Dept of the Interior

[23] Campbell, Sally et al. (2000) Monitoring for Ozone Injury in West Coast (Oregon, Washington, California) Forests in 1998. USDA/Forest Service Pacific Northwest Research Station General Technical Report. Report available at `www.fs.fed.us/pnw/pubs.htm`

Fact Sheet on Particulate Matter (Soot)

What is Particulate Matter (PM)?

- Particulate matter, also known as "soot," is particles of dust, smoke, and haze that are released or kicked up into the air by vehicle travel on dirt roads, industrial crushing and grinding, and windblown dust. Burning fossil fuels, garbage, and agricultural products also releases soot into the air.
- Soot can also be formed when chemicals (many of the same that form smog) react and condense in the atmosphere.
- Soot is regulated based on the size of the particles.[1] Current standards use ten microns as a standard, which is about one-seventh of the diameter of a human hair.[2]
- Levels of soot vary depending on rainfall and wind conditions.
- Small particles are only regulated on a 24-hour and annual average, while large particles are regulated on an hourly basis.
- Soot reduces visibility and clouds the views in the Valley, the Sierra Nevada, and even in our national parks.

Soot in the San Joaquin Valley

- The San Joaquin Valley is classified as a "serious" non-attainment area for soot, the most serious designation available under the Clean Air Act.
- Soot emissions increased between 1985 to1995 in the San Joaquin Valley.[3]
- The region faces a deadline for attaining the soot standards by December 31, 2001. However, the local air district does not have a plan that will ensure healthy air by even 2006.

Major sources of soot:	
Agriculture & factory farms	23.1%
Unpaved road dust	23.2%
Paved road dust	13.3%
Waste Burning & Disposal	10.6%
Windblown (natural)	10.6%
Construction & Demolition	5.1%
Industrial processes	3.9%
Residential Fuel Combustion	2.5%
Petroleum Prod. & Marketing	0.3%

Source: San Joaquin Valley Air Pollution District

Sources:

"State of the Air: 2001," published by the American Lung Association

[1] The EPA has also proposed new standards for particles smaller than 2.5 micrograms because recent studies have documented that the smaller particles are even more deadly than larger particles (See fact sheet on 'Effects of Pollution').

[2] Source: Bay Area Air Quality Management District 2001 (www.baaqmd.gov)

[3] Great Valley Center Report: http://www.greatvalley.org/research/publications/index.htm

Sources of Information on Air Pollution and its Effects

The Great Valley Center's "The State of the Great Valley of California" Report, published April 2001. Full report available at: http://www.greatvalley.org/research/publications/index.htm

Up-to-date ozone monitoring data for the San Joaquin Valley is available at:
http://www.arb.ca.gov/aqd/y2d_oz/o3sumy01.htm

Effects of pollution on plants and national parks:
Assessment of Air Quality and Air Pollutant Impacts in Class I National Parks in California, published by the US Department of the Interior, April 2001.

Campbell, Sally et al. (2000) Monitoring for Ozone Injury in West Coast (Oregon, Washington, California) Forests in 1998. USDA/Forest Service Pacific Northwest Research Station General Technical Report. Report available at www.fs.fed.us/pnw/pubs.htm

"Asthma and the Environment: A Strategy to Protect Children," President's Task Force on Environmental Health Risks and Safety Risks to Children, May 2000. Report available at: http://www.epa.gov/children/whatwe/fin.pdf

American Lung Association of California:
ALAC position statement on diesel. American Lung Association of California urges Conservation, Renewable Energy, and Emergency-Only use of Diesel Generators, June 5, 2001. Available at:
www.californialung.com/spotlight/cleanair01_nr.html

Study linking small-particle soot to heart attacks:
Peters, Annette et al (2001). Increased Particulate Air Pollution and the Triggering of Myocardial Infarction. *Circulation*, vol. 103, pp.2810-2815. Also available on the web at www.circulationaha.org

Study linking air pollution to missed school days:
Gilliland et al. 2001. The Effects of Ambient Air Pollution on School Absenteeism due to Respiratory illness. *Epidemiology* vol.12, pp.43-54.

Study on the economic burden of asthma:
Smith, David et al. (1997). A National Estimate of the Economic Costs of Asthma. *American Journal of Respiratory and Critical Care Medicine*, Vol.156, pp. 787-793. Also available online at http://ajrccm.atsjournals.org

Asthma costs by city:
Asthma and Allergy Foundation of America http://www.aafa.org/highcosts/city.html

Data on asthma hospitalizations:
California County Asthma Hospitalization Chart Book, CA Department of Health Services, August 2000. Report available at http://www.dhs.ca.gov/ps/deodc/ehib/ehib2/topics/asthma.html

California County Asthma Mortality Chart Book, CA Department of Health Services, April 2000. Report available at http://www.dhs.ca.gov/ps/deodc/ehib/ehib2/topics/asthma.html

"State of the Air 2001," American Lung Association. Data for California available at:
http://www.lungusa.org/air2001/states/s_california.html. Full report available at
http://www.lungusa.org/air2001/index.html

Latino Issues Forum publication "Confronting Asthma in California's Latino Communities" April 1999. Available online at www.lif.org

A complete annotated bibliography of recent studies of the health effects of ozone air pollution from 1997 to 2001 is available from the American Lung Association (www.lungusa.org)

Fact Sheet on Ozone Pollution in the San Joaquin Valley

What is ozone?

- Ozone (O_3) is a gas consisting of three oxygen atoms.
- In our atmosphere, there are two types of ozone – "good" ozone and "bad" ozone.
- "Good" ozone forms the "ozone layer," miles above the earth that protects humans and all other living things from the sun's harmful ultraviolet rays.
- "Bad" ozone accumulates at ground level and causes the air pollution known as smog.

How does smog form?

- "Bad" ozone (smog) is formed at ground level when pollutants, known as "ozone precursors," mix in the sun's heat and light.
- Levels of smog are highest during the summer months due to increased sunlight and heat.
- VOCs (volatile organic compounds) come primarily from cars and other gasoline-burning engines. Other major industrial sources of VOCs include gas stations, dry cleaners, paints, insecticides, and solvents used in degreasing operations.
- NOx (oxides of nitrogen) are produced mainly by burning fossil fuels. Motor vehicles, heavy industry, and power plants are the major sources of these chemicals.

Major VOC sources:	Major NOx sources:
cars, trucks, and buses: 24%	cars, trucks, and buses: 38%
solvents: 21%	oil and gas production: 25%
pesticides and agricultural waste burning: 21%	off-road mobile sources: 21%
oil and gas production: 19%	other industrial sources: 11%
off-road mobile sources: 11%	electric utilities: 4%

Smog pollution in the Valley

- The Central Valley of California has the fastest growing air pollution in California. Federal 1 hour ozone standards were exceeded on 39 days in the San Joaquin Valley in 1998. That compares with only 9 days in San Diego County and 8 days in the San Francisco Bay Area. The tougher 8-hour ozone standards were exceeded 92 times in the South Coast Air Basin, 82 times in the San Joaquin Valley, and 16 times in the SF Bay Area.
- To date in 2001, preliminary data indicate that there have already been 12 exceedance days of the federal 1-hour standard and 43 exceedance days of the 8-hour standard. This is a significant increase over levels in the past several years.
- According to the recently released American Lung Association report "State of the Air 2001," the top five most smog polluted counties in the country are in California, and three of those are in the San Joaquin Valley--Kern, Fresno, and Tulare.

- The San Joaquin Valley region has the second highest level of smog in the country after Los Angeles.[1]
- For more than half of the summer months in the Valley, the air is too polluted for children to safely play outside.
- Throughout the 1990s, smog levels in Los Angeles have steadily decreased, while the San Joaquin Valley's levels have not improved,[2] and this year the Valley is getting worse.
- The Great Valley Center reported that while smog trends nationwide have declined, in the San Joaquin Valley smog violations have persisted at dangerous levels.[3]
- If these trends persist, smog levels in the San Joaquin Valley could become the worst in the country.[4]
- The San Joaquin Valley is home to 9 percent of California's population but accounts for 14 percent of the state's pollution.[5]
- Since the passage of the Clean Air Act in 1977, residents have never had a safe summer. Current smog levels mandate that the region should be designated by the EPA as a "severe" non-attainment area – which would require the region to adopt stricter rules for new pollution sources.
- The responsible air district has never come up with a plan that will reduce ozone pollution by the deadlines. After failing to reduce smog levels by the 1999 deadline, the district still lacks a plan to bring healthy air and blue skies back to the Valley.

Sources:

http: www.epa.gov/region01/eco/dailyozone/oz_prob.html

"Smog – who does it hurt?" Published by the EPA in July, 1999 (also available at www.epa.gov/oar/oaqps)

"State of the Air: 2001," published by the American Lung Association

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[1] State of the Air 2001

[2] Data are from California Air Resources Board http://www.arb.ca.gov/homepage.htm

[3] The Great Valley Center's "The State of the Great Valley of California" Report published April 2001, available at: http://www.greatvalley.org/research/publications/index.htm

[4] Indications based on days of exceedance of national 1-hour ozone standard from 1990-2000

[5] April 2001, Assessment of Air Quality and Air Pollutant Impacts in Class I National Parks in California, published by the US Department of the Interior.

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July 17, 2001

Via Facsimile and Certified Mail

Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Laura Yoshii
Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
Mail Code ORA-1
75 Hawthorne Street
San Francisco, CA 94105

Re: Notice of Intent to File Clean Air Act Citizen Suit

Dear Administrator Whitman and Acting Regional Administrator Yoshii:

This letter is submitted on behalf of the following organizations:

- the Medical Alliance for Healthy Air (PMB 59, 5132 N. Palm Avenue, Fresno, CA 93704-2203);

- the Sierra Club, including its Tehipite Chapter (P.O. Box 5396, Fresno, CA 93755-5396), Kern-Kaweah Chapter (P.O. Box 3357, Bakersfield, CA 93385-3357) and Motherlode Chapter (1414 K Street, Suite 300, Sacramento, CA 95814) (the Sierra Club's headquarters are located at 85 Second Street, San Francisco, CA 94105);

- the Latino Issues Forum (785 Market Street, Third Floor, San Francisco, CA 94103); and

- the Center on Race, Poverty and the Environment, a project of the California Rural Legal Assistance Foundation (1224 Jefferson Street, Suite 25, Delano, CA 93215).

LAW FIRM FOR THE ENVIRONMENT
180 MONTGOMERY STREET, SUITE 1725 SAN FRANCISCO, CA 94104-4209
T 415 627-6725 F 415 627-6749 E eajusca@earthjustice.org W: www.earthjustice.org

These groups hereby notify you, pursuant to Section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), that they intend to sue the U.S. Environmental Protection Agency ("EPA") to address its failure to perform at least thirteen non-discretionary actions, specified below, as mandated by Congress to protect the health and welfare of the residents of the San Joaquin Valley.

Introduction

On May 1, 2001, the American Lung Association released a report demonstrating that three of the five most smog-ridden places *in the nation* are situated in the San Joaquin Valley. Breathing is a more dangerous proposition in Bakersfield, Fresno and the Visalia-Tulare-Porterville area than in any other city nationwide, bar Los Angeles. Making matters worse, Valley residents are also breathing unhealthy levels of soot, a pollutant with severe health consequences, including premature death.

It is hard to imagine anything more fundamental to life than the air we breathe. Nonetheless, the State and local agencies with the frontline responsibility for ensuring healthy air in the San Joaquin Valley have abdicated their respective responsibilities in blatant violation of not only the Clean Air Act, but also common sense and basic fairness.[1] As the agency Congress deemed ultimately responsible for maintaining clean air for all residents of this nation, EPA has the duty to ensure that this region brings its smog and soot down to healthy – and legal – levels. Yet EPA, far from stepping in with affirmative action, has failed to meet its numerous statutory deadlines for putting this derailed clean-up process back on track.

Air Pollution in the Valley

Nearly three decades after Congress promised in the 1970 Clean Air Act that all residents of this country would breathe clean and healthy air, the San Joaquin Valley has yet to attain the basic public health standard set by EPA for either ground-level ozone ("smog") or particulate matter ("soot"). Unlike other regions of the United States that have balanced the public's desire and need for clean air with economic development, the scales in the Valley have tipped heavily and repeatedly in favor of unrestrained pollution, with the San Joaquin Valley Unified Air Pollution Control District ("Air District") allowing pressure from special interest industry groups to trump the greater public interest in maintaining healthy air. Valley residents bear the burden of these tradeoffs with ill health, increased medical costs, reduced education opportunities caused by smog- and soot-related school absenteeism, and premature death.

While most "non-attainment areas" in the country have shown at least modest improvement in controlling smog pollution, the Valley's smog levels are demonstrating disturbing trends en route to eclipsing Los Angeles as the dirtiest region in the nation.

Today, the same organizations submitting this letter are also putting the San Joaquin Valley Unified Air Pollution Control District on notice that they will file suit addressing its failure to comply with State Implementation Plan measures to control smog which the Air District itself adopted, also in clear violation of the Clean Air Act.

Already this year the Valley has violated the 1-hour smog standard twelve times. By the same date in prior years, *i.e.*, by July 8th, there were far fewer violations: seven violations in 2000, and three and four violations in 1999 and 1998, respectively.

The Valley has so regularly exceeded the national health standard for soot that it has earned EPA's dirtiest possible soot classification. And, current projections show no end in sight. According to the California Air Resources Board, the Valley's soot emissions have **increased** steadily every year since 1975, and are projected to continue rising for the foreseeable future.

In its proposed plan for coming into attainment with the soot standard, the Air District openly admits the plan is so inadequate that the Valley cannot possibly meet its current attainment deadline of December 31, 2001. Even more alarming is the District's admission that it cannot assure EPA – or the public – that the Valley will come into attainment by 2006, which is the latest date to which EPA could legally re-extend the deadline.

Human Health, Economic and Environmental Costs

The failures of both the Air District and EPA to remedy this problem have exacted very real human and economic costs from all Valley residents. EPA's own studies conclude that pollution from smog and soot causes tens of thousands of premature deaths nationwide each year. This same pollution also exacerbates asthma attacks and increases risks of heart attacks, conditions that lead to increases in emergency room visits and days of work lost. Smog and soot even affect the education of our children because asthma attacks, worsened or even precipitated by air pollution, are a leading cause of school absenteeism. And, these pollutants do not impose equal burdens of health risks. They have a disproportionate effect on our most vulnerable residents – children, the elderly, and persons already suffering from respiratory ailments.

EPA is well aware that smog jeopardizes the lives of millions of Americans with asthma. EPA itself recently found "strong and convincing evidence that exposure to [smog] is associated with exacerbation of asthma-related symptoms." 66 Fed. Reg. 5002, 5012 (Jan. 18, 2001). The impacts of air pollution on "asthmatics are of special concern particularly in light of the growing asthma problem in the United States and the increased rates of asthma-related mortality and hospitalizations, especially among children in general and black children in particular." 62 Fed. Reg. 38856, 38864 (July 18, 1997).

Shockingly, asthma is now the leading cause of hospital admissions of young children in California. The rapid rise in asthma rates among California's children and its disproportionate impact on minority and low-income asthmatic children have been documented by one of the organizations submitting this letter. *See* Latino Issues Forum, *Confronting Asthma in California's Latino Communities* at 3-4 (Apr. 1999) (*e.g.*, 29 percent of Latino children in California lack health insurance and so those suffering from asthma often go undiagnosed and/or untreated until a medical emergency arises).

Persons suffering from adverse health reactions to smog and soot are not the only ones who bear the impact of pollution. We are all paying with higher health insurance premiums and taxes because of the Valley's persistent air pollution problems. For example, each emergency room visit for a child suffering from a severe asthma attack costs an average of $6300; and the statewide costs of asthma-related hospitalization totals about $350 million annually, with nearly a third of that bill paid by the taxpayer-financed State Medi-Cal program.

In addition, high smog levels threaten and damage agriculture, an industry that forms the base of the Valley's socioeconomic structure and that is vital to the nation's economy. Exposure to smog pollution suppresses the development of crops and trees by inhibiting photosynthesis and decreasing their capacity to form the carbon compounds needed for growth and maintenance. These weak and sick plants are more susceptible to insect and pathogen attacks. The economic impact of smog on agriculture is staggering, with the Air District estimating the cost of crop damage in excess of $150 million annually.

Even the high Sierra – seemingly removed from polluted population centers – suffers the effects of dirty air transported from the Valley: nearly forty percent of Jeffrey and Ponderosa pines in Sequoia and Kings Canyon National Parks show obvious signs of damage from smog. Visibility in these parks, once famous for their sweeping vistas, has been radically impaired over the decades. In fact, these are now two of the most polluted national parks in the entire country, on some days even more polluted than Los Angeles. Of course, this too has economic consequences, as the diminished quality of the recreational experience in these heavily-visited parks impacts the nearby Valley communities dependent on park tourism.

EPA's Violations of the Clean Air Act

1. Failure to Formally Find the Valley in Non-Attainment with the Ozone Standard and to Re-Designate the Valley as a "Severe" Non-Attainment Area for Ozone

After the Valley missed all prior deadlines, the Clean Air Act Amendments of 1990 classified the San Joaquin Valley as a "serious" non-attainment area for smog and established November 15, 1999, as the new deadline for attaining the national smog standard. The Valley again failed to meet this deadline.

Under the Act, EPA was required to make a formal determination as to whether the Valley met its attainment deadline within six months of that deadline – *i.e.*, by May 16, 2000. 42 U.S.C. § 5709(c). On June 19, 2000, EPA published a proposed rule to formally find that the Valley failed to meet its deadline and to reclassify the region as a "severe" non-attainment area. 65 Fed. Reg. 37926.[2]

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[2] EPA based its proposed finding on monitoring data collected between 1997 and 1999 and summarized in Attachment 1 hereto. Since a region is deemed to have failed to attain the national standard if four or more violations of the national smog standard are recorded at any single monitoring station over the three years previous

EPA never finalized this proposed rule. Instead, eleven months later, on May 18, 2001, EPA re-proposed the rulemaking, to delete from the Valley non-attainment area the eastern portion of Kern County after receiving public comment recommending that this area should be treated as a different air basin. 66 Fed. Reg. 27616 (May 18, 2001). Thus, fourteen months after its statutory deadline, EPA has yet to make the finding required by law.

EPA's delayed action continues to have serious consequences for the San Joaquin Valley. Once EPA makes the non-attainment finding, it is mandated by the Act to move the region from a "serious" to a "severe" ozone classification – as, indeed, it has proposed to do. This re-classification triggers a requirement that within twelve months thereafter the Air District prepare for EPA approval a new "severe area" attainment plan to meet a new attainment date of November 15, 2005. In addition to meeting all of the requirements for a "serious" area plan (which, obviously, the Air District's current plan does not), the new plan must also:

- for the first time, impose stringent control measures on pollution sources emitting between 25 and 50 tons of pollution annually (currently, only sources emitting over 50 tons are subject to such measures);

- require new pollution sources to offset their emissions by buying emission credits from other pollution sources, or by enabling some other source of ozone pollution to permanently reduce its emissions by an offset ratio of at least 1.3 to 1 (at present, the ratio is only 1.2 to 1); and

- provide detailed and specific measures to ensure pollution is reduced by a rate of at least 3 percent per year from 2000 until the new 2005 attainment deadline.

66 Fed. Reg. at 27617. Until EPA acts, the 12-month sanctions clock for the Air District to submit a new plan does not start, and so the Air District need not take seriously its obligation to finalize such a plan, the first and crucial step toward getting the region on the path to attainment.

2. Failure to Take Action on the 1997 Particulate Matter Attainment Demonstration Plan

In 1993, after it became clear that the Valley would not meet the December 31, 1994, soot attainment deadline, EPA re-classified the Valley from "moderate" to "serious" for soot, extending the attainment deadline to December 31, 2001. 58 Fed. Reg. 3334 (Feb. 8, 1993). The new "serious" attainment plan required by this bump-up was submitted by the Air District to EPA for approval in 1994.

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to the attainment date (*see* 40 C.F.R. § 50.9(a), App. H), and this occurred at many monitoring stations in the Valley over that period (*see* Attachment 1), EPA's non-attainment conclusion is unassailable.

The Clean Air Act requires EPA to approve or to disapprove an attainment plan submission within one year after finding the plan met the minimum completeness criteria a plan submission must meet to be considered for approval. 42 U.S.C. § 7410(k)(2). When EPA fails to make a completeness finding, the plan is automatically deemed complete six months after submittal. 42 U.S.C. § 7410(k)(1).

EPA has never taken any action whatsoever on the 1994 attainment plan.

On May 15, 1997, the Air District adopted yet another soot attainment plan that incorporated and superceded the 1994 plan. The 1997 Plan was submitted to EPA for approval on July 23, 1997. The 1997 plan was deemed complete on January 24, 1998, triggering the one-year clock for EPA final action. But, again, EPA has failed to take any action whatsoever on the plan. Accordingly, EPA has been in continuing violation of its mandatory duty to approve or disapprove the 1997 Plan since January 24, 1999 – *i.e.*, for well over two years.

Again, EPA's inaction has serious public health consequences. As the Air District openly acknowledges in the plan itself, even if fully implemented, the plan will not bring the San Joaquin Valley into attainment with the national soot standard by the December 31, 2001, attainment deadline, and is unlikely to achieve attainment even five years later (the latest possible date to which EPA can legally extend the deadline). Thus, once EPA finally acts on that plan, it surely must disapprove it, and the Air District will have to return to the drawing board to prepare a new, and hopefully far more effective, plan for finally attaining the national soot standard.

3. Failure to Take Action on Air District Rules Adopting the "West-Side Exemption"

Section 182(b)(2) of the Clean Air Act required the Air District to submit to EPA, as an amendment to the Valley's attainment plan, rules applying "Reasonably Available Control Technology" to all major contributors of smog pollution by November 15, 1992. In response, the Air District promulgated the following series of rules for regulating emissions of smog precursors from internal combustion engines, stationary gas turbines, boilers, steam generators and process heaters – and submitted them to EPA for approval and incorporation into the Valley's attainment plan:

District Rules	Adopted	Submitted to EPA	EPA Made Completeness Finding
District Rule 4305	12/19/1996	3/3/1997	8/12/1997
District Rule 4351	10/19/1995	3/26/1996	5/15/1996
District Rule 4701	12/19/1996	3/10/1998	5/21/1998
District Rule 4703	10/16/1997	3/10/1998	5/21/1998

As adopted by the District, these rules apply to *all* of these particular sources, regardless of where they are located. However, as the District proposes they be incorporated into the EPA-approved attainment plan, the rules would *not* apply to *any sources operating west of Interstate 5* (in Fresno, Kings and Kern counties). Because such measures are federally enforceable only if contained in EPA-approved plans, the practical effect of the so-called "West-Side Exemption" is that the select group of polluters located west of I-5 – including many oil refineries that we understand successfully lobbied for the exemption in the first place – are shielded from EPA administrative, judicial or criminal action and from citizen suits seeking to force them to comply with the rules.[3] Instead, the public can only rely on the Air District to ensure that the new measures are fully implemented. Considering the Air District's record thus far, this is not reassuring to those that breathe Valley air.

On September 14, 1998, EPA responded to these Air District submissions with a proposal disapproving the West-Side Exemption because it violates Clean Air Act requirements that the Air District 1) adopt *all* reasonably available measures for controlling smog emissions, *and* 2) include *all* such measures in a federally enforceable plan. 63 Fed. Reg. 49053, 49055 (Sept. 14, 1998).

Once again, EPA failed to follow through. As explained above, the Act requires EPA to take final action on any submittal for inclusion in an attainment plan, such as these rules, within one year of a finding that the submissions are complete. 42 U.S.C. § 7410(k)(2). In this case, EPA has been, and continues to be, in violation of the Clean Air Act by failing to take final action since May 15, 1997, with respect to Rule 4351, August 12, 1998, with respect to Rule 4305, and May 22, 1999, with respect to Rules 4701 and 4703. EPA's failure to act on these rules means they are likely to go unenforced against oil refineries and other polluters located west of I-5, which collectively emit over 100 tons per day of oxides of nitrogen (NOx), a primary smog component -- *i.e.*, more than ten percent of the entire Valley's daily NOx emissions.

4. EPA's Failure to Disapprove the Air District's Rules Exempting Factory Farms and Existing Pollution Sources from New Permitting Requirements

Title V of the Clean Air Act and EPA's implementing regulations at 40 C.F.R. Part 70, required the Air District to develop and submit to EPA by November 15, 1993, an operating permit program for major sources of air pollution. 42 U.S.C § 7661a(d)(1). EPA is required to approve or disapprove each program within one year after receiving the submittal. *Id.* EPA refused to approve all of the Air District's proposed program because the implementing rules contained several serious deficiencies. Instead, it gave only interim approval. 61 Fed. Reg. 18087 (Apr. 24, 1996).

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[3] This West-Side Exemption applying to oil refineries is particularly disturbing in light of EPA's 1999 finding that 54 percent of the oil refineries it inspected nationwide were in significant non-compliance with the requirements of the Clean Air Act. EPA Annual Report on Enforcement and Compliance Assistance Accomplishments in 1996, available at http://es.epa.gov/oeca/fy99accomp_cover.pdf at p. A-12.

The Air District responded by promulgating and submitting to EPA the following two rules to address the offending portions of the operating permit program:

District Rules	Adopted	Submitted to EPA
District Rule 2020	9/17/98	10/27/98
District Rule 2201	8/20/98	9/29/98

District Rule 2020 lists the pollution sources exempt from permits and hence from pollution controls; and District Rule 2201 identifies the permit obligations these pollution sources are required to comply with. These two rules together are designed to help achieve attainment by imposing preconstruction and permitting requirements on certain new and modified sources of air pollution.

To its credit, EPA again proposed to disapprove portions of these two rules because they remained weak and inconsistent with federal law. 65 Fed. Reg. 58252 (Sept. 28, 2000). In its proposed disapproval, EPA documented the various deficiencies of these rules. In Rule 2020, the Air District flatly exempts giant factory farms from any pollution requirements. As EPA concludes, the exemption violates the Clean Air Act requirement that permits are mandatory for all pollution sources based on the amount of pollution they emit, regardless of whether they are farms, factories, or power plants. In any event, these factory farms are not family farms, but huge industries, given their size and the volume of emissions.

District Rule 2201 is illegal because it would authorize an existing industrial facility to increase pollution levels without having to implement new pollution control measures. As such, this rule is in direct conflict with EPA's regulation requiring that stringent pollution control measures (known as "Lowest Achievable Emission Rate") be implemented when an existing facility expands, thereby significantly increasing its pollution emissions. 40 C.F.R. § 51.165.

Finally, District Rule 2201 also falls short of Clean Air Act requirements because it does not ensure that a new industrial facility offset its new pollution from other sources in the verifiable manner required by the Act. The Act provides that EPA may approve the Air District's offset program upon a showing that for every 100 tons of new pollution, 130 tons of pollution from existing sources will be retired or eliminated. 42 U.S.C. § 7511a(d)(2). As EPA points out in its proposed disapproval: "[Rule 2201] is deficient because it does not include a specific and enforceable remedy for a shortfall in the annual equivalency demonstration. EPA believes that the rule must be revised to contain a mandatory and enforceable remedy to cure any annual shortfall and prevent future shortfalls." 65 Fed. Reg. at 58253.

As explained above, the Act requires EPA to take final action on any submittal for inclusion in an attainment plan, such as these rules, within one year of a finding that the submissions are complete. 42 U.S.C. § 7410(k)(2).

Once again, EPA has failed to follow through on its proposed disapprovals of these two rules. It is unclear when EPA made a completeness finding on these rules, but assuming the latest possible date (*i.e.*, the completeness finding was either made or deemed made six months after submission to EPA), District Rules 2020 and 2201 were complete no later than April 27, 1999, and March 29, 1999, respectively – triggering the one-year clock for EPA to take final action by no later than April 27, 2000, and March 29, 2000, respectively. Thus, EPA has been in continuing violation of the Act for well over a year in failing to take final action on these two Air District rules.

5. Failure to Take Action on the 1994 Ozone Plan's Contingency Measures

A critical part of every attainment plan is the obligation to identify, and provide for, the implementation of "specific measures to be undertaken if the area fails to meet [attainment]." 42 U.S.C. § 7511a(c)(9). When an area does not attain the ozone standard, such "contingency measures" are intended "to take effect without further action by the [Air District]." *Id.* As with any other part of an attainment plan, EPA is required to review and assess the adequacy of the proposed contingency measures. The San Joaquin Valley portion of the State's Attainment Plan was submitted to EPA on November 15, 1994. 61 Fed. Reg. 10920, 10925 (Mar. 18, 1996).

The 1994 Ozone Plan prepared by the Air District and submitted to EPA for its approval, identified nine contingency measures. Plan at 4-24. The Air District conservatively estimated these contingency measures would lead to a total of more than fourteen tons per day of emissions reductions. Plan at 4-30. However, when approving other portions of the 1994 Ozone Plan, EPA failed to act on these contingency measures. Instead it explicitly deferred taking action: "[T]he section 172(c)(9) and 182(c)(9) requirement for contingency measures, will be acted upon in separate rulemakings." 62 Fed. Reg. 1149, 1157 (Jan. 8, 1997). Separate rulemakings, however, were not forthcoming.

As explained above, the Act requires EPA to take final action on any submittal for inclusion in an attainment plan, such as these contingency measures, within one year of a finding that the submissions are complete. 42 U.S.C. § 7410(k)(2). This time it appears that EPA failed to take any action whatsoever on the 1994 Ozone Plan's contingency measures. It is unclear when EPA made a completeness finding on the contingency measures, if at all, but assuming the latest possible date (*i.e.*, the completeness finding was either made or deemed made six months after submission to EPA), EPA was required to act on this submittal no later than May 15, 1996. Thus, EPA has been in continuing violation of the Act for well over five years in failing to approve or disapprove the contingency measures.

Without final EPA action the contingency measures are neither approved (therefore becoming federally-enforceable), nor disapproved (thereby mandating the development of new contingency measures). Consequently, when the Air District missed the November 15, 1999, smog attainment date, there were no federally-enforceable contingency measures ready to be implemented.

6. Failure to Take Action on Air District's Soot Rules Submitted in 1993

To help address the serious soot problems plaguing the Valley, the Air District in 1993 submitted to EPA for its approval Air District Rules 4201 and 4901, on November 18, 1993, and December 10, 1993, respectively. Rule 4201 establishes a prohibition against emitting soot above a certain standard. Rule 4901 places limits on soot emissions from wood burning stoves. Earlier this month, EPA, without explanation, deferred action on these two rules, while taking final action on soot rules for the Imperial County and the Monterey Bay Air Districts. 66 Fed. Reg. 36170 (July 11, 2001).

As explained above, the Act requires EPA to take final action on any submittal for inclusion in an attainment plan, such as these rules, within one year of a finding that the submissions are complete. 42 U.S.C § 7410(k)(2). Again, in the absence of EPA finding the submissions complete, the rules automatically became complete on May 18, 1994 and June 10, 1994, respectively, and EPA was required to act to approve or disapprove these rules within twelve months of completeness. Because it has not acted on these two rules, EPA has been in continuing violation of the Act since May 19, 1995, and June 11, 1995.

Conclusion

When EPA approved the Air District's 1994 Ozone Attainment Plan, it stated: "While the State may submit revisions to change individual strategies, **EPA intends to hold it accountable for timely delivery of the commitments in the plans approved today.**" 62 Fed. Reg. 1149, 1151 (Jan. 8, 1997). Documented above are at least thirteen specific instances where EPA has failed to hold the Air District accountable.

Unless these identified deficiencies are promptly mitigated, we anticipate filing suit in the U.S. District Court for the Northern District of California sixty days after your receipt of this letter. Please feel free to contact either Deborah Reames or Bruce Nilles at the address and telephone number provided above, whether to correct or clarify our understanding of these matters, to further discuss the basis for these claims, or to explore possible options for resolving some or all of these claims short of litigation.

Sincerely,

Deborah S. Reames
Bruce E. Nilles
Attorneys for the Medical Alliance for Healthy Air, the Sierra Club, Latino Issues Forum and the Center on Race, Poverty and the Environment

Kirsten Tobey
Earthjustice Research Associate

cc: Jack Broadbent, EPA Region IX (by Certified Mail)
Governor Gray Davis (by Certified Mail)
Michael Kenny, Executive Officer, California Air Resources Board (by Certified Mail)
David Crow, Executive Director, San Joaquin Valley Unified Air Pollution Control District (by U.S. Mail)

Attachment 1. San Joaquin Valley Ozone Readings: Exceedances by Monitoring Site

Monitoring Site	Number of days over the standard 1997-1999	Average number of exceedance days per year
Fresno—4706 E. Drummond	12	4.0
Fresno—3425 N. First	20	6.7
Fresno—Sierra Skypark #2	15	5.0
Parlier	36	12.0
Clovis	40	13.3
Edison	27	8.3
Maricopa (97-98 only)	8	4.0
Arvin	28	6.3
Hanford	7	2.3
Turlock	4	1.3
Visalia	8	2.7
Merced	5	1.7
Edwards	6	2.0

Table 1 from the Proposed Clean Air Act Reclassification, 65 Fed. Reg. 37926

Definition of Attainment: The One-Hour ozone standard of 0.12 ppm may not be exceeded on average more than one day per year over any three year period. 40 C.F.R. § 50.9 & App. H.

EARTHJUSTICE
LEGAL DEFENSE FUND

BOZEMAN MONTANA DENVER COLORADO HONOLULU HAWAII
JUNEAU ALASKA NEW ORLEANS, LOUISIANA SAN FRANCISCO CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON D.C.

July 17, 2001

Via Facsimile and Certified Mail

David L. Crow, Executive Director
San Joaquin Valley Unified Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, CA 93726-0244

Re: Notice of Intent to File Clean Air Act Citizen Suit

Dear Mr. Crow:

This letter is submitted on behalf of the following organizations:

- the Medical Alliance for Healthy Air (PMB 59, Fresno, CA 93704-2203);
- the Sierra Club, including its Tehipite Chapter (P.O. Box 5396, Fresno, CA 93755-5396), Kern-Kaweah Chapter (P.O. Box 3357, Bakersfield, CA 93385-3357) and Motherlode Chapter (1414 K Street, Suite 300, Sacramento, CA 95814) (the Sierra Club's headquarters are located at 85 Second Street, San Francisco, CA 94105);
- the Latino Issues Forum (785 Market Street, Third Floor, San Francisco, CA 94103); and
- the Center on Race, Poverty and the Environment, a project of the California Rural Legal Assistance Foundation (1224 Jefferson Street, Suite 25, Delano, CA 93215).

These groups hereby notify you, pursuant to Section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), that they intend to sue the San Joaquin Valley Unified Air Pollution Control District ("Air District") for its failure to implement six mandatory pollution control measures contained in the Air District's 1994 Ozone Attainment Demonstration Plan, as detailed below. These parties also today are notifying the U.S. Environmental Protection Agency of their intent to file suit challenging that agency's inaction on more than a dozen separate statutory deadlines designed to protect Valley residents from dangerous levels of air pollution. (*see* "EPA Notice," enclosed).

LAW FIRM FOR THE ENVIRONMENT
[illegible] MONTGOMERY STREET, SUITE [illegible] SAN FRANCISCO, CA 94104-4209
T 415 627-6725 F 415 627-6746 E earthjustice@earthjustice.org W www.earthjustice.org

The need for prompt and decisive action cannot be disputed. As explained in the EPA Notice, breathing is a more dangerous proposition in Bakersfield, Fresno and the Visalia-Tulare-Porterville area than in any other city nationwide, bar only Los Angeles. If current trends are permitted to continue, then before the end of this decade the ozone (or "smog") levels in San Joaquin Valley will be worse than that of Los Angeles. Making matters worse, Valley residents are also breathing unhealthy levels of soot, a pollutant with even more severe health consequences, including premature death.

This notice of intent to bring suit is in response to the Air District's failure to meet every deadline since passage of the 1970 Clean Air Act for cleaning the air of smog and soot, including the most recent deadline of November 15, 1999. Additionally, the Valley's air quality appears to be getting worse, rather than improving. Not only is the Valley en route to eclipsing Los Angeles' infamous smog levels, but according to the California Air Resources Board, soot emissions in the region, increasing steadily every year since 1975, are now projected to continue rising for the foreseeable future.

It is hard to imagine anything more fundamental to living than the air we breathe. Certainly Congress agreed when adopting the Clean Air Act in 1970. Nonetheless, the Air District, with primary responsibility for ensuring healthy air in the San Joaquin Valley, has abdicated that responsibility. Far from stepping up to meet its obligations to get air quality in the Valley on track to clean – and legal – levels, the Air District has failed even to comply with an array of legal deadlines from its own 1994 Ozone Attainment Demonstration Plan ("1994 Ozone Plan").

The Clean Air Act Amendments of 1990 classified the San Joaquin Valley as a "serious" non-attainment area for smog and established November 15, 1999 as the deadline for attaining the national standard. To meet this deadline, the Air District adopted and forwarded for approval to EPA on November 14, 1994, its 1994 Ozone Plan. EPA subsequently approved this plan in part. 62 Fed. Reg. 1150-1187 (Jan. 8, 1997).

The Valley failed to meet the November 15, 1999 attainment deadline, again by a wide margin. Attainment requires that the one-hour ozone standard of 0.12 ppm not be exceeded on average more than one day per year over any three year period. 40 C.F.R. § 50.9 and Appendix H. From 1997 through 1999, not one of the thirteen Valley monitoring stations met this standard, and some stations registered more than a dozen annual violations. Consequently EPA has proposed to make a formal determination that the Valley failed to attain the standard, thereby "bumping-up" the region to a "severe" ozone non-attainment area.

The primary responsibility for the region's failure to meet the national smog standard rests squarely with the Air District, which: (1) adopted an attainment plan with inadequate measures to control the emission of smog-causing pollution, and then (2) failed to implement many of those control measures that were included in the plan.

This notice letter addresses the latter problem. The former will be partly addressed through litigation against EPA: once EPA finalizes its proposed finding of non-attainment and bump-up, the Air District will be required to prepare a new "severe area" attainment plan for EPA approval within one year, with a new attainment date of November 15, 2005. This redesignation is important because, in addition to meeting all of the requirements for a "serious" area plan, a "severe" plan must also impose stringent control measures on pollution sources emitting between 25 and 50 tons of pollution annually (currently, only sources emitting over 50 tons each year are subject to such measures). Further, a "severe" plan must require new pollution sources to offset their emissions by buying emission credits from other pollution sources, or by enabling some other source of ozone pollution to permanently reduce its emissions by an offset ratio of at least 1.3 to 1 (at present, the ratio is only 1.2 to 1).

The 1994 Ozone Plan required the Air District to adopt and implement the six following pollution control rules in accordance with the schedule indicated below. These six rules were intended to address emissions of the two primary components of smog, oxides of nitrogen (NOx) and volatile organic compounds (VOCs):

Rule Number	Description	Required Adoption Date	Required Implementation Date	Estimated Pollution Reductions
4601	Architectural Coatings	1st Quarter, 1996	1st Quarter, 1998	1.51 tons/day VOC
4692	Commercial Charbroiling	2nd Quarter, 1996	2nd Quarter, 1998	0.39 tons/day VOC
4623	Organic Liquid Storage	3rd Quarter, 1995	3rd Quarter, 1998	3.0 tons/day VOC
4311	Oil Production Well Cellars	2nd Quarter, 1996	2nd Quarter, 1998	0.56 tons/day VOC
4663	Organic Solvent Waste	2nd Quarter, 1996	2nd Quarter, 1998	0.19 tons/day VOC
4412	Oil Well Drilling Rigs	2nd Quarter, 1996	2nd Quarter, 1998	0.87 tons/day NOx

Source of Fed. Reg. 37926-37932 (June 19, 2000) (except Rule 4412 status, see Apr. 27, 2000 ROP report at A-30).

The Air District have neither adopted nor implement any of these six rules, in clear violation of the Clean Air Act. The Act required that the 1994 Ozone Plan contain enforceable strategies to attain the smog standard. 42 U.S.C. § 7502(a)(2), (c). Once the commitment to adopt and implement specific rules was approved by EPA, the commitment became an enforceable strategy, and the Air District is obligated to strictly comply with the strategy, including the associated deadlines. Failure to comply is a violation of "an emission standard or limitation" as defined by the Act, and therefore enforceable by a citizen suit. 42 U.S.C. § 7604(a) &(f).

Conclusion

Unless the rules discussed above are promptly adopted and implemented, we anticipate filing suit in the U.S. District Court for the Eastern District of California sixty days after your receipt of this letter. The suit will address the Air District's continuing violation of the 1994 Ozone Plan which constitutes a violation of an emissions standard or limitation within the meaning of the Clean Air Act.

Please feel free to contact either Deborah Reames or Bruce Nilles at the address and telephone number provided above, whether to clarify our understanding of these matters or to explore the possibility of resolving these claims short of litigation.

Sincerely,

Deborah S. Reames
Bruce E. Nilles
Attorneys for the Medical Alliance for Healthy Air, the Sierra Club, Latino Issues Forum and the Center on Race, Poverty and the Environment

Kirsten Tobey
Earthjustice Research Associate

encl.

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Laura Yoshii, Acting Regional Administrator (by Certified Mail)
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ONGOING FAILURE TO ATTAIN NATIONAL HEALTH STANDARDS EPA AND AIR DISTRICT BLOW 19 DEADLINES TO ACT

I. Three Most Recent Missed Deadlines For Attaining National Standards

December 31, 1994 - Deadline for Valley to attain soot standard
November 15, 1999 - Deadline for Valley to attain smog standard
December 31, 2001 - Deadline for Valley to attain soot standard [1]

II. Nineteen Reasons Why The San Joaquin Valley Continues To Violate National Standards:

1995

1. May 18 - EPA required to approve/disapprove District Rule 4201 regulating soot pollution - NO ACTION TAKEN

2. June 10 - EPA required to approve/disapprove District Rule 4901 regulating soot pollution from residential wood burning - NO ACTION TAKEN

1996

3. May 15 - EPA required to approve/disapprove contingency measures in Air District's 1994 Ozone Attainment Plan - NO ACTION TAKEN

1997

4. May 15 - EPA required to approve/disapprove District Rule 4351 (Boilers / Steam generators) - NO ACTION TAKEN

5. May 18 - EPA required to approve/disapprove District Rule 4201 (Restricting soot emissions) - NO ACTION TAKEN

6. June 10 - EPA required to approve/disapprove District Rule 4901 (Woodburning stoves) - NO ACTION TAKEN

(Based on prior violations it can't meet this deadline)

1998

7. April 1 - Deadline for Air District to implement Rule 4601 regulating pollution from architectural coatings - NO ACTION TAKEN

8. July 1 - Deadline for Air District to implement Rule 4692 regulating pollution from commercial charbroiling - NO ACTION TAKEN

9. July 1 - Deadline for Air District to implement Rule 4411 regulating pollution from oil production well cellars - NO ACTION TAKEN

10. July 1 - Deadline for Air District to implement Rule 4663 regulating pollution from organic solvent waste - NO ACTION TAKEN

11. July 1 - Deadline for Air District to implement Rule 4412 regulating pollution from oil well drilling rigs - NO ACTION TAKEN

12. August 12 - Deadline for EPA to approve/disapprove Air District Rule 4305 (Boilers / Steam generators) - NO ACTION TAKEN

13. October 1 - Deadline Air District to implement Rule 4623 regulating pollution from organic liquid storage - NO ACTION TAKEN

1999

14. January 24 - Deadline for EPA to approve/disapprove Air District 1997 Soot Attainment Plan - NO ACTION TAKEN

15. May 21 - Deadline for EPA to approve/disapprove Air District Rule 4701 (Internal combustion engines) - NO ACTION TAKEN

16. May 21 - Deadline for EPA to approve/disapprove Air District Rule 4703 (Gas turbines) - NO ACTION TAKEN

2000

17. March 29 - Deadline for EPA to approve/disapprove Air District Rule 2020 (permit exemptions) - NO ACTION TAKEN

18. April 27 - Deadline for EPA to approve/disapprove Air District Rule 2201 (permit obligations) - NO ACTION TAKEN

19. May 16 - Deadline for EPA to find Valley did not attain smog standard and "bump-up" region to "severe" smog designation - NO ACTION TAKEN

Valley seeks reprieve on air
Officials look into pushing 2005 deadline back to 2007

Mark Grossi - THE FRESNO BEE
May 23, 2001, Wednesday

A hammer waits in 2005 if the smoggy San Joaquin Valley does not make a strict federal air standard: expensive penalties for businesses and the loss of perhaps millions in road-building money.

State and Valley officials think the federal standard could be too tough to attain by 2005, especially for a region that annually ranks among the five worst air basins in the country.

To reach the standard, the Valley can't have any more than one violation per year for a three-year period -- three violations in three years. The Valley's air has been improving, but the eight-county region had almost 100 violations in the last three years.

The Valley's best year was 1997 when 16 violations were recorded, still beyond a reasonable chance of attaining the standard. The district must have only one violation a year in 2003, 2004 and 2005.

The San Joaquin Air Pollution Control District last week accepted an invitation from the U.S. Environmental Protection Agency to explain why and how the deadline should be moved back to 2007.

The EPA said the law clearly makes 2005 the deadline, though cities such as Chicago and Milwaukee have a 2007 deadline because they qualified for an extra two years during a transition period in the early 1990s when newer standards were imposed.

"Cities like Chicago have the extra two years," said district deputy director Mark Boese, "and their air quality is not as bad as ours. The meteorology and topography here is perfect for ozone."

Smog and ozone form on sunny days and remain trapped by mountains and summertime inversion layers. Ozone, a corrosive gas, builds in the atmosphere until it irritates the lungs of healthy people and inflames those afflicted with asthma.

For the last 18 months, the EPA has been going through the process of listing the Valley among 10 other regions nationally that are in "severe nonattainment" of the federal ozone standard. In the federal registry last week, the EPA announced its proposal, which included a provision to separate the desert region of Kern County.

The announcement, which triggers the 2005 deadline for compliance, also sought public opinions on why the Valley should be allowed a 2007 deadline. The comments are due in mid-June. The Valley air district also must file a compliance plan by July 2002.

EPA officials said they requested comments about the 2005 deadline in response to the California Air Resources Control Board, which suggested the Valley's problems are too severe to overcome in such a short time.

"We're not aware of any legal policy or precedent that would allow the deadline to be pushed to 2007," said Celia Bloomfield, environmental protection specialist for the EPA. "That's why we asked for public comment. Maybe something else will be brought to our attention."

Officials at the Valley air district, which encompasses eight counties and 25,000 square miles, will have a few things to say. For instance, very strict rules on diesel won't take effect until 2004 and 2006.

"We're saying it might be good to have the new federal diesel standards in place before you penalize the Valley," Boese said. "We need almost zero emission vehicles. Technology is what will solve it."

Cars and trucks are a focal point because they contribute more than 60% of the ozone in the Valley, officials said. Cars come under the jurisdiction of the state Air Resources Board, and diesel standards are set by the federal government.

The Valley air district works with local industries and businesses, which now account for about one-third of the smog. The locals will be the first to be stung by a penalty if the air standard is not met.

The penalty will be $5,000 for every ton of emissions above a baseline amount set in 1990. For some companies, it could amount to tens of thousands of dollars.

"It sends a message to businesses," Boese said. "It tells them that it might be a good idea to locate somewhere else."

The reporter can be reached at mgrossi@fresnobee.com or 441-6316.

4 smoggiest cities located in California
L.A., Bakersfield, Visalia area, Fresno

Jane Kay, Chronicle Environment Writer
Tuesday, May 1, 2001

URL: http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/05/01/MN166066.DTL

Despite some improvement in California's air quality, the state still holds the top four positions on an annual list of America's 25 smoggiest cities, the American Lung Association said yesterday.

Metropolitan Los Angeles, Bakersfield, Fresno and the Visalia-Porterville area lead the national list, the organization said, placing the sick, young and elderly at a greater risk of asthma, bronchitis and emphysema.

Other California cities ranked among the 25 worst in the nation are Sacramento, Merced and San Diego. No Bay Area city was considered smoggy enough to make the list. Modesto was included last year, but its air improved enough to drop off the latest list.

The study, based on 1997 to 1999 data, credited favorable weather conditions and better pollution controls on cars and factories for California's overall improvement.

Around the state, the study found that air quality dropped in Yolo, Butte and Glen counties, yet improved in Santa Cruz, San Benito and Colusa counties.

Nationally, among cities that monitor for ozone, the cleanest in the country for two years in a row were Bellingham, Wash.; Colorado Springs, Colo.;

Des Moines, Iowa; and Duluth, Minn. Salinas was the only California city to make this year's clean list.

The nonprofit American Lung Association initiated the annual study last year. Besides pollution measures, the study also includes estimates of vulnerable populations for every U.S. county.

Exposure to airborne pollutants can be a serious hazard, health experts said.

"Ozone is a major pollutant in terms of health effects on children and adults, particularly for people with asthma," said Dr. John Balmes, professor of medicine at the University of California at San Francisco and chief of the Division of Occupational and Environmental Medicine at San Francisco General Hospital.

"People with asthma have inflammation of their airways to start with and ozone amplifies the inflammation," Balmes said.

Normal kids, athletes, construction workers and others who spend a lot of time exercising outdoors during smoggy, sunny afternoons also can experience airway inflammation from ozone, Balmes said.

A major University of Southern California study, released in January and financed by the state Air Resources Board, found that children were more likely to miss school because of sore throats, coughs and asthma attacks in the three to five days after a significant rise in ozone levels.

Ozone, the major ingredient in smog, is formed as a ground-level air pollutant when volatile organic compounds and nitrogen oxides combine in sunlight. The gas can cause chest pains, coughing, wheezing, lung and nasal congestion, labored breathing and eye and nose irritation. It can also make people more susceptible to lung infection and allergies, and can damage forests and crops.

Cars, power plants, gas stations, dry cleaners, oil refineries and paint shops release the precursor pollutants that produce ozone.

Nationwide, many more people were breathing unhealthy air in 1997-1999 compared with 1996-1998, the American Lung Association said. The number of bad- air counties -- determined by a weighted average of unhealthy ozone days -- jumped 15 percent, to 382, up from 333.

The counties rated with the worst air had a combined population of 141 million, up from 132 million the year before. That included 30 million children under the age of 14 and more than 17 million people over age 65, along with 3.6 million adults and 1.9 million children with asthma, the study said.

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Uphill battle over air looms

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By KERRY CAVANAUGH, Californian staff writer e-mail: kcavanaugh@bakersfield.com

To make the 2005 federal deadline for cleaning the valley's summertime air pollution, two key pollutants must be reduced by at least 30 percent each.

That's the preliminary estimate the San Joaquin Valley Air District announced during its ozone attainment plan workshop Tuesday.

District Planning Manager Dave Jones said meeting the federal standard by 2005 will be very difficult.

"Our intent is to make it," he said.

Based on preliminary estimates, air regulators said the valley will have to cut as much as 150 tons per day of both reactive organic gases (ROG) and nitrogen oxides (NOx) -- the two pollutants that form ozone in heat.

That will take strong measures. In April, the district's governing board voted to implement the enhanced smog check for 700,000 more valley cars.

That expanded program, which offers the biggest emissions cut immediately on the horizon, is only expected to cut about 6 tons per day of ROG and NOx.

Air district officials offered a general outline of how they will try to make the giant cut in pollution, including:

* New regulations for stationary sources, such as factories and power plants.

* A new market-based program for businesses to cut emissions.

* Continued incentive programs to convert vehicles and equipment to cleaner fuels.

* Continued work with cities and counties on land-use policies that reduce reliance on cars.

Tuesday's workshop was one of the first public meetings on the district's plan to reduce ozone pollution. Workshops are planned for September and December. The plan must be finished and adopted by the district's governing board by May 2002.

The U.S. Environmental Protection Agency will soon reclassify the valley to severe non-attainment because the district has failed to meet the health-based standard for

ground-level ozone That's a designation topped only by the Los Angeles area's extreme category.

To make that 2005 deadline, the valley must not exceed the federal standard for ozone on a single day. Last year, the valley's summertime ozone levels surpassed that standard a total of 31 days.

The EPA is pondering pushing the date back to 2007. If the valley doesn't clean its air in time, penalties kick in. Possible penalties include, excess emissions fees at $5,000 per ton, more paperwork-intensive permitting, increased controls and the need to buy emissions offsets for smaller sources.

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Editorial: Air pollution 'severe'

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In a matter of weeks, the federal Environmental Protection Agency is expected to reclassify the level of air pollution in the San Joaquin Valley from "serious" to "severe."

That does not mean suddenly we will be gasping and wheezing from an increased level of pollutants in the air. It means federal regulators have evaluated evidence that our air already severely exceeds federal standards for pollutants that contribute to smog.

The designation also means more than a bureaucratic maneuver in a decades-long battle to clean up California's air. It means the economic vitality of the valley and the well-being of its residents may be affected.

Cleaning up the air is not someone else's job. We all have a stake in its success. We all must participant in the battle.

Much has been said about, and much has been invested in, cleaning up the valley's industrial pollution sources. In Kern County, the oil industry has paid a lion's share of the cleanup cost. Many other industries also have spent millions to install pollution-trapping equipment.

But San Joaquin Valley Unified Air Pollution Control District officials note that 60 percent of the valley's pollution comes from individuals — from the cars we drive, the paints we smear on our houses, the logs we burn in our fireplaces, the solvents we use for cleaning, etc.

The choices individuals and businesses make — their vehicle and fuel choices, and their living and working schedules — make a difference. They can either add to the amount of pollutants now clogging the air, or help reduce it.

A designation of "severe" air quality will restrict existing business activity and prevent some new businesses from moving to Kern County. It must serve as a warning that residents' quality of life and health are threatened. It is not a matter of seeing the mountains on a clear day. It is a matter of our physical and economic well-being.

On June 1, work on a $27 million Central California ozone study will

begin. A joint project of the San Joaquin and Bay area air pollution districts, as well as the California Air Resources Board and private industry, the study is headed by Kern County Supervisor Barbara Patrick, who also serves on CARB.

The study will continue the work of an earlier study to determine pollution sources and recommend ways to clean up the valley's air.

In the meantime, business, government and individuals must join together to support strategies already known to be effective. They include:

- Individuals — Drive less; purchase fuel-efficient vehicles; use water-based paints; carpool to work; telecommute if you can; avoid cleaning with solvents; burn natural gas rather than logs in fireplaces; etc.

- Industry — Use the best known technology to reduce the amount of pollutants spewed into the air.

- Government — Select less polluting vehicles for agency fleets; approve development plans that minimize sprawl; encourage only pollution-sensitive industries to locate in the valley.

Other suggestions can be found on the air pollution control district's Web page at www.valleyair.com

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